

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTONIO PERGAMO, et al.,

No. C 08-04737 CRB

Plaintiffs,

**ORDER DENYING REQUEST FOR
TEMPORARY RESTRAINING
ORDER AND DISMISSING
COMPLAINT WITH LEAVE TO
AMEND**

v.

HOMEcomings, A GMAC COMPANY,
et al.,

Defendants.

Plaintiffs, representing themselves, filed this contract/fraud action in connection with a home loan plaintiffs received from defendants. The "Factual Background" of the Complaint states in its entirety:

On August 21, 2006, HOMECOMING FINANCIAL LLC, through their agents loan officers (Does 1 through 10) did verbally represent to the plaintiffs that they were approved for a loan in the first amount of \$701,120.79 in United States to profit the defendants, by charging excessive interest and did so collect excessive interest payments from the plaintiff and less than 0%-0% credited to the principle [sic] they claimed is at risk.

Complaint at p. 2. Plaintiffs ask the Court to empanel a Grand Jury to investigate the defendants, to arrest defendants, and to enjoin the sale of plaintiffs' property. They make claims for breach of contract/covenant of good faith and fair dealing (First Cause of Action); fraud and racketeering (Second Cause of Action); usury and racketeering (Third Cause of Action); and intentional infliction of emotional distress (Fourth Cause of Action).

1 Plaintiffs have also filed an ex parte request for a temporary restraining order;
2 plaintiffs seek an order preventing plaintiffs from being moved out of their home. Plaintiffs'
3 motion is DENIED. While the jurisdiction section of the Complaint recites that the action
4 arises under various federal statutes, the Complaint in fact makes only state law claims
5 (breach of contract, emotional distress, fraud); thus, this Court does not have federal
6 jurisdiction of the complaint. See 28 U.S.C. § 1331. Nor does the Court have diversity
7 jurisdiction as the Complaint recites that at least one of the defendants is a citizen of
8 California, as are plaintiffs. Complaint at p. 2; 28 U.S.C. § 1332. Even if the Court had
9 jurisdiction of the Complaint, the Court would deny the request for a temporary restraining
10 order because plaintiffs have not presented evidence sufficient to justify the entry of such
11 order and have not filed a proof of service on defendants.

12 Accordingly, plaintiffs' complaint is DISMISSED with leave to amend. In particular,
13 on or before **December 5, 2008** plaintiffs shall file an amended complaint of which this
14 Court has jurisdiction and which clearly sets forth the facts giving rise to plaintiffs' claims.
15 Plaintiffs are warned that their failure to comply with this deadline may result in dismissal of
16 their action with prejudice.

17 The Court suggests that Plaintiffs seek assistance from the Legal Help Center, located
18 at the federal courthouse, 450 Golden Gate Avenue, San Francisco, on the 15th Floor, room
19 2796. Plaintiffs must visit the Help Center to make an appointment to meet with a Help
20 Center attorney.

21 **IT IS SO ORDERED.**

22 Dated: October 31, 2008



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE